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(10)

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1995

PAUL SCHENCK

PETITIONER

v.

PRO-CHOICE NETWORK OF WESTERN NEW YORK

RESPONDENT

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE WITH BRIEF BY LEGAL DEFENSE FOR UNBORN CHILDREN IN SUPPORT OF NEITHER PARTY

ALAN ERNEST
COUNSEL FOR AMICUS

P.O. BOX 4041
RIO RICO, AZ 85648
(520) 281 - 7513

38 pp

MOTION FOR LEAVE TO FILE
AMICUS CURIAE BRIEF

Interest of Amicus

The amicus curiae brief, which does not support either party, defends the constitutional right to life of the unborn, which the parties have not done.

Argument

The amicus proves that the Fourteenth Amendment's universal guarantee of life to "any person" does include the unborn. Thus this Court must not only overrule Roe v. Wade, 410 U.S. 113, it must rule that the States have a duty to protect unborn life.

This disposes of all issues in this case.

Consent

The respondent refused to consent to the filing of this brief.

Conclusion

The Constitution's universal guarantee of life to "any person" is America's most important legal right. The lives of tens of millions of children depend on their being permitted to present all relevant evidence and arguments to prove that this universal guarantee of life to "any person" does include the unborn.

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Alan Ernest
Counsel

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INTEREST OF AMICUS

The amicus defends the right to life of the unborn, which the parties have not done.

SUMMARY OF ARGUMENT

The Constitution's guarantee of life to "any person," made in its Fifth and Fourteenth Amendments, does include the unborn. States have a duty to protect the unborn.

Argument

I.

THE U.S. CONSTITUTION'S GUARANTEE OF LIFE TO "ANY PERSON" DOES INCLUDE THE UNBORN

The Declaration of Independence announced that reverence for life is America's founding principle. It said that all men are created equal, all are endowed by their Creator with an unalienable right to life, and the purpose of government is to protect the life of everyone.

America told the world that if we will follow our love of life wherever it may lead, then a future of more abundant life, which we can look forward to with hope, will unfold before us.

On the other hand, James Madison warned (Federalist Papers No. 10) that the primitive idea, that some can gain by harming others, had ruined all democracies known to history. And today, the lethal inventions of science have made reverence for life the only way to the future.

1. ON ITS FACE, THE U.S. CONSTITUTION'S GUARANTEE OF LIFE TO "ANY PERSON" DOES INCLUDE THE UNBORN

This guarantee of life to everyone was incorporated into the Constitution. Its Fifth and Fourteenth Amendments guarantee that not "any person" can be deprived of "life ... without due process of law."

The words "any person" are universal, admit of no exceptions for anyone, make no distinction between born and unborn life, and on their face include the unborn, the same as everyone else. The obvious purpose of guaranteeing life universally to "any person" was to forbid making exceptions so some persons could be exterminated.

The Court admitted (Roe v. Wade, 410 U.S. at 156-157) that if the word "person" included the unborn, then Roe v. Wade "collapses," because the lives of the unborn would be "guaranteed" by the Constitution. In ruling "the word 'person'...does not include the unborn," the Court hit the Constitution head-on, and directly defied its express prohibition of extermination.

The words "any person" are the two most important words ever written into law because they protect the lives of everybody from extermination, and they summarize America's unique contribution to civilization. As Lincoln said, what made America great was the promise "that ALL should have an equal chance."

The words "any person" are the words which guarantee that equal chance to live to ALL; they stand as the supreme political achievement of the human race, the prize of milleniums of struggle. If the Constitution had stated it protected the life of "any person - except the unborn," then its words would support Roe v. Wade. But its words say "any person," without any exceptions.

In 1975, the Supreme Court of West Germany held that the words in its Constitution, "Everybody has the right to life," did include the unborn. It explained that the word "everybody" is universal.[1]

The U.S. Supreme Court ruled that the words "any person" included Chinese aliens,

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1. See case in R. Destro, Abortion and the Constitution, The Need For A Life Protective Amendment, 63 Cal. L. Rev. at 1341-51 (1975).

merely saying the words are "universal in their application, to all persons ... without regard to any differences." Yick Wo v. Hopkins, 118 U.S. 356, 369 (1886).

But in Roe v. Wade, the Court ignored the letter of the law. Instead the Court focused on the isolated word "person," and ignored its modifier "any." Yet "any" is the word which means ALL, and extends the right to life to everyone without any exceptions.

By reading the universal guarantee of life to "any person" as if it were merely a guarantee to "some persons," the Court did the most forbidden thing and reduced the most important law in history to nothing.

The U.S. Constitution extends its guarantee of life to "any person." The letter of the law permits no exceptions. On their face the universal words "any person" do include the unborn.

2. THE SPIRIT OF THE LAW PROVES THE CONSTITUTION'S GUARANTEE OF LIFE TO "ANY PERSON" INCLUDES THE UNBORN

Roe v. Wade violates the spirit of the law, as well as its letter. The Court itself ruled that the Declaration of Independence is the spirit of the Fourteenth Amendment:

> The first official action of this nation declared the foundation of government in these words: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life..." While such declaration of principles may not have the force of organic law ... yet the latter is but the body and the letter of which the former is the thought and the spirit, and it is always safe to read the letter of the Constitution in the

spirit of the Declaration of Independence. No duty rests more imperatively upon the courts than ... to secure the equality of rights which is the foundation of free government.
Gulf, Colo. & S. Fe Ry v. Ellis, 165 U.S. at 159-160 (1896).

There is no real medical dispute that the unborn have been created.[2] Reading the letter of the Constitution, the guarantee of life to "any person," in the spirit that ALL are "created equal," and ALL shall get their chance to live, proves that the words "any person" do include the unborn.

3. HISTORY CONFIRMS THAT THE U.S. CONSTITUTION'S GUARANTEE OF LIFE TO "ANY PERSON" INCLUDES THE UNBORN

The last time the Court implied an exception to the words "any person" was Dred Scott v. Sandford, 19 How. 393 (1857), where the Court ruled that the words "any person," as used in the Fifth Amendment, did not include Negroes; the phase "all men are created equal" did not include Negroes; there was a constitutional right to own a slave; Congress could not prohibit slavery in the territories; people were free to choose whether or not to own slaves; and Negroes could not sue in federal courts to see if they were slave or free.

Abraham Lincoln opposed the Dred Scott decision. If officials can say all men are created equal except Negroes, he asked, "where will it stop?" He said that Dred Scott was based on "falsehood." He alleged a conspiracy by the U.S. Supreme Court, two Presidents, and leading members of Congress

2. The uncontested medical evidence in the Texas brief in Roe v. Wade showed the fetal heart begins "pulsations at 24 days"; and "brain waves have been noted at 43 days"; and the unborn child is "alive."

to make slavery legal everywhere and overturn the U.S. Constitution.

Lincoln said he would not obey Dred Scott. He said the President swears an oath to obey the Constitution as he understands it, and not as it was understood by the Supreme Court. If the President were bound by Dred Scott, he said "the people will have ceased, to be their own rulers."

Dred Scott triggered a civil war. President Lincoln defied the Court's decision, that there was a constitutional right to own a slave, because he emancipated the slaves and declared them to be "forever free." He reminded us at Gettysburg that we were fighting to see whether a nation dedicated to the proposition that "all men are created equal" could long endure.

The Fourteenth Amendment was intended to rededicate America to its original proposition. One of its framers explained:

> "It establishes equality before the law, and it gives to the humblest ... the most despised ... the same protection before the law as it gives to the most powerful.... Without this ... there is no republican government."
> Rep. Jacob Howard, quoted in B. Schwartz, 1 Statutory History of the United States: Civil Rights 262 (1970).

The framers learned from Dred Scott. They said the Supreme Court must never again imply exceptions to the words "any person." They employed the universal words most suited for this purpose. And the people had already enacted criminal abortion laws to protect all stages of unborn life, showing the guarantee of life to "any person" means what it says.

Yet Roe v. Wade is another Dred Scott disaster. The Court rejected truth, reason and law. The Court assumes that, without one word of explanation, the framers

intended their promise of life to "any person" to sweep away all their abortion statutes and make the killings, which they said were criminal, into "liberty." The Court assumes the framers connived to repudiate a major point of the civil war, so judges would again be at liberty, as in Dred Scott, to convulse society by implying more exceptions to the words "any person." And the Court amends the Declaration of Independence to read "all men are created equal - except those created to be killed." The Court claims it can decree who was created to be killed.

The Court did the most forbidden thing. It defied the Constitution's guarantee of life to "any person," and decreed extermination to be legal.

The Constitution's letter, spirit, history, presumption in favor of life, and medical facts known to its framers, prove its guarantee of life to "any person" does include the unborn.

II.

ROE v. WADE IS VOID BECAUSE IT CRIMINALLY DEFIED THE CONSTITUTION'S GUARANTEE OF LIFE TO "ANY PERSON" AND CONDEMNED TO DEATH MILLIONS OF VICTIMS WHOM THE CONSTITUTION ENDEAVORS TO PRESERVE

1.

ROE v. WADE CRIMINALLY DEFIED THE GUARANTEE OF LIFE TO "ANY PERSON" BECAUSE THE COURT DECREED KILLINGS TO BE "LIBERTY" WHICH THE PEOPLE HAD DEFINED TO BE "MURDER." THE COURT DECREED "MASS MURDER IS LIBERTY"

When Roe v. Wade was decided in 1973, an abortion was murder if the child was "born alive." A child could be "born alive" during second trimester abortions.

A physician explained to Congress that Roe v. Wade permitted second trimester hysterotomy abortions (basically Caesareans)

and children killed by this abortion can be "born alive"

> With few exceptions, babies aborted by this method will all move, will all breathe, and some will cry.... Almost all were born alive.[3]

Throughout their history, Americans had defined such killings to be "murder." But in 1973 the Court decreed such killings to be "liberty." In effect, the Court decreed MASS MURDER IS LIBERTY.

1. THE COURT DECREED KILLINGS TO BE "LIBERTY" WHICH AMERICANS HAD CONDEMNED AS "MURDER" SINCE EARLIEST COLONIAL TIMES

America's first settlement at Jamestown followed the English common law, as did other colonies. The common law defined an abortion in which a "quick" (about 4 months gestation) child died after being "born alive" to be "murder."[4] Even if not yet viable, if the child was "born alive," the standard 17th century authority condemned the abortion as "so horrible an offense" and "this is murder."[5]

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3. Hearings on Constitutional Amendments on Abortion, before subcomm. on Civil and Constitutional Rights, of the House Comm. of the Judiciary, 94th Cong., 2d Sess., Ser. 46, Part 1, at 397 (1976). Most procedures can result in a child born alive.
There are about 140,000 second trimester abortions each year. Washington Post, April 26, 1985, A11.

4. Coke, 3 Inst. 50; Hawkins, 1 Hawkins Ch. 13, s. 16; Blackstone, 4 Bl. Com. 198.

5. Coke, 3 Inst. 50. Jefferson wrote, "This work is executed with so much learning and judgment, that I do not recollect that a single position in it has ever been judici-

The English writers cited this as the correct statement of the law.[6] And English courts followed this law.[7]

The English common law was the law of the land in colonial America. By allowing second trimester abortions in Roe v. Wade, the Court decreed killings to be "liberty" which Americans had defined to be "murder" since earliest colonial times.

2. THE COURT DECREED KILLINGS TO BE "LIBERTY" WHICH THE FRAMERS AND ADOPTERS OF THE FOURTEENTH AMENDMENT DEFINED TO BE "MURDER"

The English common law is the dictionary which American courts use to construe the state and federal homicide statutes.[8]

By the time the Fourteenth Amendment was adopted in 1868, American legal authorities and State supreme courts had long followed the common law rule that second trimester abortions were murder if the child were born alive. And viability was irrelevant. If death were caused by the

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ally denied....It may still be considered as the fundamental code of English law." 14 Writings of Thomas Jefferson 57 (1907). He served on the 1776 committee which adapted Virginia's laws to republican form, the common law being assigned to him.

6. 1 J.F. Archbold, A Complete Treatise on Criminal Procedure, Pleading and Evidence 783 (Waterman Am. ed. 7th ed. 1860); 1 W.O. Russell, A Treatise on Crimes and Misdemeanors 671-672 (4th ed. 1865).

7. Regina v. West, 2 C & K 784 (1848).

8. Clarke v. State, 117 Ala. 1 (1898); Hamilton v. United States, 26 App. D.C. 382 (1905).

child being too immature to survive outside the womb, the abortion was murder.

An 1859 report by the American Medical Association stated the law of murder which existed throughout the United States:

> If a person, intending to procure abortion, does an act which causes the child to be born earlier than its natural time, and therefore in a state much less capable of living, and it afterwards die in consequence of such premature exposure, the person who by this misconduct brings the child into the world, and puts it into a situation in which it cannot live, is guilty of murder.[9]

This was the uncontradicted view in the United States when the Fourteenth Amendment was adopted.[10] This definition of murder was approved by the preeminent legal writers of the 19th century,[11] and it was adopted by State supreme courts.[12] It was

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9. Reported in A.S. Taylor, A Manual of Medical Jurisprudence 462 (6th ed. 1866). He described the AMA report as "a complete and comprehensive exhibit of laws of each of the United States." Id., at 460.

10. 2 J.P. Bishop, Commentaries on the Criminal Law 365 (4th ed. 1868); A.S. Taylor, supra n. 9, at 462, 517 (1866).

11. F. Wharton, A Treatise on the Law of Homicide in the United States 93 (1855); Bishop, supra n. 10; Taylor, supra n. 9.

12. Clarke v. State, 117 Ala. 1 (1898); Watson v. State, 117 A 2d 549 (1955); Porter v. Lassiter, 87 S.E. 2d 100 (1955); State v. Anderson, 343 A 2d 505 (1975); People v. Chavez, 176 P. 2d 92 (1947).

still the law in 1973.[13] In 1975 the New Jersey courts applied this law of murder to an unviable fetus born alive:

> That a fetus may be the victim of murder if it be born alive has long been a part of our common law....Coke, Institutes 58 (1648).[14]

For almost four centuries governments came and went in America, but this law of murder endured as the law of the land. And it is binding on the U.S. Supreme Court.[15]

When it ruled in Roe v. Wade that States could not protect unborn life until viability - "about 7 months,"[16] the Court decreed killings to be "liberty" which the framers and adopters of the Fourteenth Amendment had defined to be "murder."

3. U.S. SUPREME COURT AND U.S. GOVERNMENT CLAIM POWER TO DECREE MASS MURDER OF JEWS, OR ANYONE, TO BE LIBERTY

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13. 2 L. Burdick, The Law of Crime 156 (1946); 1 Wharton's Criminal Law and Procedure 434 (12th ed. 1957); R. Perkins, Criminal Law 30 (2d ed 1969).

14. State v. Anderson, 343 A. 2d 505, 508 (1975), affirmed 413 A. 2d 611 (1980). The courts rejected the claim it was not murder because "the infants were never capable of maintaining a separate and independent existence." Id. at 615.

15. Chief Justice Marshall ruled that this Court must accept the construction given by a state to its own statute. Pollard v. Dwight, 4 Cranch 421, 429.

16. Roe v. Wade, supra, 160, 163.

Of course, if the U.S. Supreme Court can decree the mass murder of some persons to be liberty, it can decree the mass murder of anybody to be liberty.

Indeed, when the U.S. Supreme Court was accused of mass murder in the U.S. District Courts, the U.S. Government defended its Supreme Court by expressly claiming the Court must be obeyed even if it decreed the mass murder of Jews, or anyone else, to be liberty. An incredulous U.S. District Judge asked the U.S. Government:

> [U.S. District Judge]: Let me ask you to respond to this question. The plaintiff argues in his brief that the Supreme Court in Roe v. Wade took a discrete group of entities and said that these entities have no right to live, and thus may be killed ....And he said if you take Roe v. Wade and remove the word "fetus" and just substitute most any other word you want of another discrete group, that we wouldn't be here discussing this at all. Let's say that instead of "fetus," they said "Jews." That is the one he used in his brief.
>
> Would you argue stare decisis to me if, under Roe v. Wade, at the whim of neighbors Jews could be put to death?
>
> [U.S. Govt. Lawyer]: (I) would have to agree with the doctrine of stare decisis and advance it to the court.[17]

The U.S. District Judge adopted the U.S. Government's claim that he must obey

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17. Ernest v. U.S. Attorney for the Eastern District of Virginia and U.S. Attorney General, U.S. District Court in Richmond, Civ. No. 84-0858, transcript of proceedings at 21-22.

the U.S. Supreme Court even if it decreed mass murder to be liberty. And on review, not one single Justice had any objection to this ruling.[18]

And the Justices were accused of mass murder in a U.S. District Court on the grounds they had decreed mass murder to be liberty. Each Justice defended himself or herself by claiming all lower courts must obey the U.S. Supreme Court "no matter how misguided" its decrees may appear to be.[19]

Thus the U.S. Government, and its U.S. Supreme Court, claim the power to decree the mass murder of Jews, or anyone else, to be liberty.

4. THE U.S. SUPREME COURT HAS COMMITTED TREASON TO THE U.S. CONSTITUTION

Chief Justice John Marshall would have called Roe v. Wade "treason to the Constitution." In Marbury v. Madison, he wrote that the purpose of the Constitution was to control the government, including judges, and the intention of its framers is the law. Thus he ruled that the Court could not extend the Constitution "to objects not ... contemplated by its framers."[20] And Marshall warned that if the Court usurped such power, it would be "treason to the Constitution."[21]

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18. Ernest v. U.S. Attorney for the Eastern District of Virginia, and U.S. Attorney General, cert. denied 475 U.S. 1084 (1986).

19. Ernest v. Rehnquist, Stevens, Breyer, O'Connor, Scalia, Kennedy, Souter, Thomas, Ginsburg, etc., U.S. Attorney, etc., U.S. Attorney General, et al, U.S. District Court in Alexandria, Civil No. 89-732-A. Defendants' Motion to Dismiss, page 3.

20. Ogden v. Saunders, 12 Wheat. at 332.

21. Cohens v. Virginia, 6 Wheat. at 404.

The officials to be controlled are not free to invent a constitution more to their liking. Lawless officials can overthrow a constitution as surely as armed rebels. Indeed, President George Washington warned that "usurpation" was "the customary weapon by which free governments are destroyed."

By defining killings to be "liberty" which the framers had defined to be "murder," the Court exactly extended the Constitution to objects not contemplated by its framers. The Court confronts the nation with the boldest and plainest case of officials committing "treason to the Constitution" which it could encounter.

By merely changing the names of the victims being killed, the U.S. Supreme Court has duplicated the decree of "the supreme judge" of Nazi Germany, who decreed the killing of Jews to be legal.[22]

At Nuremberg, the United States prosecuted Nazi judges, who obeyed the decrees of their "supreme judge," for complicity in extermination and murder. And the Nuremberg Tribunal convicted them.

Now the key doctrines of the Nazi legal system have been adopted by the U.S. Government: supreme judges who claim power to decree the mass murder of Jews, or any-

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22. United States v. Altstoetter, 3 Trials of War Criminals Before the Nuernberg Military Tribunals 1011-1014 (1951). Hitler claimed the emergency provisions of the Weimar Constitution gave him power to act as "the supreme judge." As such he decreed the killing of Jews to be legal. The Nazi judges claimed that they could not be held accountable for complicity in extermination and murder, since they had acted "within the authority" of the "decrees" of "the supreme judge." Id. at 983-85. But the Tribunal rejected that defense, "The dagger of the assassin was concealed beneath the robe of the jurist." Id., at 985.

one else, to be legal; and officials who claim they must obey such decrees.

When officials conspire to impose Nazi doctrines on the United States, which the United States itself condemned as extermination and murder at Nuremberg, no honest person can doubt that these officials have committed treason to the U.S. Constitution.

Now the lives of all Americans depend on official whim, as in Hitler's Germany.

The Court claims it must be obeyed even when it imposes Nazi doctrines on America.[23] In effect, the Court claims TREASON IS LAW.

5. UNITED STATES RULED BY GIANT CONSPIRACY TO MASS MURDER IS MOST CATASTROPHIC CRIME IN THE HISTORY OF CIVILIZATION

America introduced civilization to the idea that reverence for life is the future for the world. Yet America is now ruled by the most corrupt decree which the human mind can even imagine - MASS MURDER IS LIBERTY. The government of the United States knows how to build and use atomic bombs, but it does not know the difference between mass murder and liberty. This is the vision which America now holds out to guide the future of the world. Now we all descend into a terrifying darkness.

2.
ROE v. WADE CRIMINALLY DEFIED THE CONSTITUTION'S GUARANTEE OF LIFE TO "ANY PERSON" BECAUSE THE COURT DEFIED THE RULINGS OF JOHN MARSHALL AND USED A "GUILTY UNTIL PROVEN INNOCENT" BURDEN OF PROOF TO INFER THAT THE WORDS "ANY PERSON" DO NOT INCLUDE THE UNBORN.

The Court used the correct burden of proof when it previously construed "any

23. See note 19, supra.

person."[24] Yet the Court actually reversed the burden of proof for the unborn.

Chief Justice John Marshall told the Court what it must prove in order to imply an exception to express and universal terms in the U.S. Constitution.

As already described, the words "any person" are express and universal, and on their face include the unborn, the same as everybody else. In order to imply an exception to exclude the unborn, so they can be killed with impunity from criminal laws, the Court must prove that including the unborn within the terms "any person" would be "so monstrous, that all mankind would, without hesitation, unite in rejecting the application."[25]

And the Court must prove that if the right to life of the unborn had "been suggested [to the framers] the language would have been so varied, as to exclude it."[26] The Court must prove that the

24. The Court ruled the words "any person" included Chinese aliens ("subjects of the emperor of China") merely saying the words are "universal." Yick Wo v. Hopkins, 118 U.S. 356, 369 (1886). And the Court was so sure that the words "any person" included "corporations," it refused to allow counsel to argue against it. Santa Clara v. So. Pac. RR, 118 U.S. 394, 396 (1886).

25. Sturges v. Crowninshield, 4 Wheat. 122, 202-203 (1819). When the Constitution uses universal words, and a case is "within the very words of the Constitution," the Court may not infer an exception unless the "absurdity and injustice of applying the provision to the case, would be so monstrous, that all mankind would, without hesitation, unite in rejecting the application."

26. Dartmouth College v. Woodward, 4 Wheat. 518, 644-45 (1819). When the

framers would have changed the Fourteenth Amendment to read: "Nor shall any State deprive any person, except unborn persons, of life without due process of law."

These are the burdens which protect the lives of all Americans from government sanctioned extermination, as happened in Nazi Germany. The Court bears the heaviest burden of proof to imply an exception to the Constitution's guarantee of life to "any person" so millions of victims can be killed with impunity from criminal laws.

Chief Justice Marshall's rules prove that the Constitution's guarantee of life to "any person" does include the unborn because "all mankind" would not unite "without hesitation" to exclude them. And the framers of the Fourteenth Amendment would not have changed its guarantee of life to read "any person - except the unborn." The people had already enacted criminal statutes to protect the lives of the unborn throughout gestation. Thus the Constitution's universal guarantee of life to "any person" does include the unborn.

The Court exactly reversed the burdens of proof described by Chief Justice John Marshall. The Court said that the evidence did not prove "with any assurance"[27] that

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Constitution uses universal words, "It is not enough to say that this particular case was not in the mind of the Convention, when the article was framed, nor of the American people, when it was adopted. It is necessary to go farther, and to say that, had this particular case been suggested, the language would have been so varied, as to exclude it, or it would have been made a special exception."

27. Roe v. Wade, 410 U.S. at 157. "Assurance" means: "To make certain and put beyond doubt." Black's Law Dictionary (4th ed. 1968).

the guarantee of life to "any person" included the unborn. Thus the Court assumed that the words "any person" did not include the unborn, and placed the burden on the unborn to prove with "assurance" that the words "any person" did include the unborn.

When courts use this burden of proof to condemn tens of millions of victims to death, Americans can not pretend they still have a government of Constitution and laws.

The Court claims it can use this burden of proof to decree the extermination of anyone to be liberty.[28]

3.

ROE v. WADE CRIMINALLY DEFIED THE U.S. CONSTITUTION'S GUARANTEE OF LIFE TO "ANY PERSON" BECAUSE THE COURT USED CRIMINAL PROCEDURES TO CONCLUDE THAT THE WORDS "ANY PERSON" DO NOT INCLUDE THE UNBORN

Roe v. Wade was a mock trial designed to exclude truth.[29]

And the Court maintains its killings with mock trials. It refuses to allow counsel to represent the unborn and defend their right to life. It refuses to allow its false evidence in Roe v. Wade, which it used to infer that the words "any person" did not include the unborn, to be cross-examined. It refuses to allow evidence to be presented to show the Constitution's guarantee of life to "any person" does include the unborn.

The Nuremberg Tribunal cited such procedures as evidence to convict the Nazi judges of complicity in extermination and

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28. See n. 19, supra.

29. The MOTION TO ALLOW COUNSEL TO REPRESENT CHILDREN UNBORN AND BORN ALIVE, filed herein, details the Court's procedures with citations.

murder. It said, "Such a mock trial is not a judicial proceeding but a murder."[30]

The Court claims that it can use such mock trials to decree the extermination of anyone to be liberty.[31]

4.

ROE v. WADE CRIMINALLY DEFIED THE CONSTITUTION'S GUARANTEE OF LIFE TO "ANY PERSON" BECAUSE THE COURT FABRICATED FALSE EVIDENCE TO CONCLUDE THAT THE WORDS "ANY PERSON" DO NOT INCLUDE THE UNBORN

The history of the criminal abortion statutes proves that the framers of the Fourteenth Amendment did not intend its guarantee of life to "any person" to exclude the unborn.

When the Amendment was adopted in 1868, over three-fourths of the ratifying States had already enacted statutes which made abortion at any stage of gestation a crime.[32] Within a few years, these criminal statutes were universal.

The ancient common law supposed that life commenced at "quickening" - when the mother felt the child stir in her womb. But judicial revision makes it impossible for the Court to assert with assurance that the common law in 1868 was any different than the abortion statutes supplanting it:

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30. United States v. Altstoetter, supra, at 1164 (1951). "The accused ... were denied the right to introduce evidence, to be confronted by witnesses against them.... They were ... denied the right of counsel of their own choice." Id., at 1046-47.

31. See note 19, supra.

32. The statutes are set out in Quay, Justifiable Abortion, Medical and Legal Foundations, 49 Geo. L. J. 447-520 (1961).

> By the ancient common law ... as the life of an infant was not supposed to begin until it stirred in the mother's womb, it was not regarded as a criminal offense to commit an abortion in the early stages of pregnancy. A considerable change in the law has taken place in many jurisdictions by the silent and steady progress of judicial opinion; and it has been frequently held by Courts of high character that abortion is a crime at common law without regard to the stage of gestation.[33]

By 1868, science had long rejected the ancient notion that life commenced at "quickening." The abortion statutes reflected the views of science that there was no time during gestation when the unborn were not alive.

In view of this history, the Court cannot meet its heavy burden to prove that the framers intended to exclude the unborn from the Fourteenth Amendment's guarantee

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33. Lamb v. State, 67 Md. 524 (1887). Some state supreme courts ruled that the common law made abortion at any stage of gestation a crime. Mills v. Comm., 13 Pa. 631 (1850); State v. Slagle, 83 N.C. 544 (1880); State v. Reed, 45 Ark. 333 (1885).

And those state supreme courts which ruled that abortion prior to quickening was not a common law crime were immediately overruled by their legislatures which made abortion at any stage of pregnancy a crime. Comm. v. Parker, 50 Mass. 263 (1845), was immediately overruled by Mass. Acts & Resolves ch. 27 (1845). State v. Cooper, 22 N.J.L. 52 (1849), was immediately overruled by N.J. Laws at 266 (1849). Abrahams v. Foshee, 3 Iowa 274 (1856) was overruled by the next legislature, Iowa Rev. Laws, tit. XXIII, ch. 165. art. 2, sec. 4221 (1860).

of life to "any person," so they could be killed for convenience. This evidence is fatal to Roe v. Wade.

Thus the Court needed to rewrite 19th century medicine and law. The Court fabricated the hypothesis that the 19th century abortion statutes were intended to protect only the mothers, not the unborn. This suggested that the American people never intended the lives of the unborn to be protected by law. This hypothesis was fabricated as follows.

A.

The Court first asserted as fact, "When most criminal abortion laws were first enacted, the procedure was a hazardous one for the woman." Roe v. Wade, 410 U.S. at 148. The Court claimed that abortions, even by physicians, were hazardous to the woman.

The only authority the Court cited to prove its assertion was a 20th century medical history book.[34] But this book only described the hazards of major surgery in general prior to Lister's discovery of antiseptics. The abortion operation was not mentioned anywhere in the entire book.

The 19th century obstetric authorities throughout the Western world prove that abortions by physicians were "perfectly safe" to the woman.[35] The Court did not

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34. Haagensen and Lloyd, A Hundred Years of Medicine 19 (1943), cited in Roe v. Wade, supra, at 148 n.43.

35. 2 T. Denman, M.D., An Introduction to the Practice of Midwifery 96 (1802). He was a standard English authority. A French physician wrote "experience has proved that the dangers of the operation are reduced to a small matter." A.L.M. Velpeau, M.D., A Complete Treatise on Midwifery 530 (4th Am. ed. 1852). The preeminent American physician wrote "to the mother there is

examine even one of these obstetric textbooks. They prove the Court's assertion, "the procedure was a hazardous one for the woman," to be false.

The Court never revealed the hazardous abortion procedure to which it was referring. Actually, the 19th century physicians generally used the ancient method,[36] which one physician traced back 2000 years,[37] and which they described as "perfectly safe" to the woman.

Since abortions by physicians were not hazardous to the mother, the only motivating purpose the abortion statutes could have had was to protect the lives of the unborn from destruction by abortions. Had it been the purpose of the legislators to only protect the mother, they would have simply required abortions to be performed by physicians.

B.

The Court next asserted as fact, "Abortion mortality was high."[38] The Court cited no authority to support it.

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very little danger." H.L. Hodge, M.D., The Principles and Practice of Obstetrics 293 (1864).

36. Dr. Denman, a standard authority in England, wrote in 1802: "the membranes of the ovum are punctured," which permitted "the discharge of the waters," which induced the "action of the uterus," which resulted in the expulsion of the fetus from the womb, which was "perfectly safe" to the woman. 2 Denman, supra, at 96-99.

37. F. Ramsbotham, M.D., The Principles and Practice of Obstetric Medicine 724 (4th ed. 1856).

38. Roe v. Wade, 410 U.S. at 149.

The Court intended this assertion to prove that physicians were killing so many women with abortions that women needed legislation to protect them from the medical profession.

The 19th century obstetric authorities prove this assertion to be false. The obstetric texts show that abortions by physicians were "perfectly safe" to women.

C.

The Court next asserted:

> "[A] State's real concern in enacting a criminal abortion law was to protect the pregnant woman, that is, to restrain her from submitting to a procedure that placed her life in serious jeopardy." Roe v. Wade, 410 U.S. at 149.

This is a false inference, drawn from two false assertions of fact.

The evidence shows these abortions statutes were intended to protect the unborn. The 19th century treatises on criminal law stated that the foetus was "a living being immediately after conception" and these abortion statutes were intended to protect the lives of the unborn during all stages of gestation.[39] And State supreme courts ruled that these abortion statutes protected the unborn.[40] And authors of the statutes said their purpose was to protect the unborn.[41]

But since abortions by physicians were known all over the western world to be safe to women, the motivating purpose of these

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39. 1 F. Wharton, A Treatise on the Criminal Law of the United States 656-57 (5th ed. 1861).

40. Smith v. State, 33 Me 48 (1851).

41. See Joynes quote, page 24, infra.

abortion statutes could only have been to protect the lives of unborn children from destruction from abortions. Since legislatures prohibited safe abortions by physicians, despite the great danger to the mother from abortions by criminals,[42] it proves that their motivating concern was to protect unborn life.

D.

The Court then concluded, "the word 'person,' as used in the Fourteenth Amendment, does not include the unborn." Roe v. Wade, 410 U.S. at 158.

The Court could not find even one 19th century authority to support this result.

In view of these abortion statutes, the Court cannot prove that the people who framed and adopted the Fourteenth Amendment intended its guarantee of life to "any person" to exclude the unborn, so they could be killed for convenience.

E.

The Court resurrected the ancient view that life commenced at "quickening" (about four months gestation) and arbitrarily expanded that to "viability" (about seven months gestation). Yet, by the time the Fourteenth Amendment was adopted, both science and law had rejected the ancient view.

A physician, who helped draft Virginia's 1848 state abortion statute, explained that science had rejected the ancient view that life began at quickening:

> (T)hat the embryo is endowed with an

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42. "In thirty-four cases of criminal abortion ... twenty-two were followed...by death, and only twelve were not. In fifteen cases necessarily induced by physicians, not one was fatal." H.R. Storer, M.D., On Criminal Abortion in America 43 (1860).

inherent vitality from the first moment of conception, and is therefore as much entitled to the protection of the law before the period of "quickening" as after it, every well-informed physician must yield a ready assent. The old doctrine, once held by medical men ... that the foetus first becomes animated, or endowed with distinct vitality, at the moment when the sensation of quickening is experienced by the mother, has been long since banished from the domain of science ... and now only finds a retreat in the dark and ancient caverns of the common law.

....

(T)he civil rights of the unborn child are perfect from the very commencement of its being.

L.S. Joynes, M.D., "Foetus in Utero," Virginia Medical Journal 179-180, 187 (1856).

In 1860 the President of the American Medical Association condemned that ancient view as a "barbarous physiology" and urged the States to enact statutes to protect all stages of unborn life:

> "This relic of a barbarous physiology needs to be exploded, and the truth should be generally promulgated, that, from the moment of conception, a new being is engendered." 13 Transaction of American Medical Association 56-7 (1860)

And America's eminent professor of obstetric medicine wrote in 1860:

> From the moment of fecundation, the new being becomes independent ... its individuality is complete.... (T)here is a progressive ... advancing from one degree of perfection to another. Every protection, therefore, which is extended by human legislation to the young infant ... should be equally effectual in securing the life of the embryo from the earliest period of its existence.[43]

But the Court adopted a view of unborn life which 19th century medical science had rejected as "a barbarous physiology," which courts had ruled "never ought to have been the law anywhere," [44] and which legislatures had condemned as criminal.

In construing the phrase in its constitution, "Everybody has the right to life," the Supreme Court of West Germany ruled the word "everybody" did include the unborn and the State had a duty to protect unborn life:

> "No distinction can be made among the several stages of developing life before birth, or between prenatal and postnatal life." (supra n. 1)

The medical and legal history show the framers and adopters of the Fourteenth Amendment made this same conclusion when they guaranteed life to "any person" without any exceptions for the unborn. They decided that unborn life was a progressive advancing from one degree of perfection to another, and there was no time when the unborn were not alive and the law could withdraw its protection of life.

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43. H.L. Hodge, M.D., The Principles and Practice of Obstetrics 78 (1864). Hodge's "name had become a household word throughout the land" and his book "valued among the very first works on obstetrics ever issued from the American or foreign press." R. Penrose, M.D., Discourse on Life of H.L. Hodge 20-21 (1872)

44. Mills v. Comm., 13 Pa. at 632 (1850).

Chief Justice Marshall ruled that the intention of the framers is the law, and for the Court to disobey it would be treason. So the Constitution's guarantee of life to "any person" includes the unborn.

The Court claims it can fabricate evidence to exclude anyone from the U.S. Constitution's guarantee of life to "any person."[45] In effect, the Court claims FALSEHOOD IS TRUTH.

5.

DUE PROCESS OF LAW HAS COMPELLED THE U.S. SUPREME COURT TO CONFESS IN COURT THAT IT IS GUILTY OF MASS MURDER AND EXTERMINATION

For the 113th time, the U.S. Supreme Court is accused of defying the Constitution's guarantee of life to "any person" and exterminating millions of victims whom the Constitution endeavors to preserve.

For the 89th time, the U.S. Supreme Court is accused of mass murder in violation of state and federal statutes.

For the 93rd time, the U.S. Supreme Court is accused of using criminal procedures to effect and maintain its Roe v. Wade killings.

But, for two decades, the Court never attempted to refute the charges.

Failure to deny a charge is admissible as a confession that the charge is true.[46] As Socrates cross-examined 2400 years ago:

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45. See note 19, supra.

46. 4 Wigmore, Evidence, § 1071-1073 (Chadborn rev. 1972). "Underlying the rule is the assumption that human nature prompts an innocent man to deny false accusations and consequently a failure to deny a particular accusation tends to prove belief in the truth of the accusation." McCormick on Evidence, § 161 (1972).

> "(Y)ou are silent, and have nothing to say. But is not this rather disgraceful, and a very considerable proof of what I was saying?"

And the Court recognizes this ancient rule:

> "(T)he Court has consistently recognized that ... silence in the face of accusation is a relevant fact.... Silence is often evidence of the most persuasive character." Baxter v. Palmigiano, 425 U.S. at 319 (1976).

Under the Court's own rulings, its silence is an admission that the charges are true:

> "Failure to contest an assertion, however, is considered evidence of acquiescence only if it would have been natural under the circumstances to object to the assertion in question." United States v. Hale, 422 U.S. 171, 176 (1975).

The circumstances leave no doubt that the Court's silence is a confession that the charges are true.

First, the evidence proves the charges to be true. The Court decreed killings to be "liberty" which States had defined to be "murder." This is mere historical fact. No denial is possible. As Chief Justice John Marshall said, "a fact which has existed cannot be made never to have existed.[47]

Second, the charges were made in cases filed pursuant to the Constitution and laws of the United States. Chief Justice John Marshall ruled that judges who "close their eyes on the Constitution" and "condemn to death those victims whom the Constitution

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47. Marbury v. Madison, 1 Cranch 137, 167 (1803).

endeavors to preserve" commit "crime."[48] The Court had a legal duty to fully hear allegations that Roe v. Wade was wrongly decided, and to obey the evidence.

Third, the Court's steadfast silence for two decades in the face of scores of accusations is unparalleled in the legal history of the world. The Court itself cited this circumstance as making confession by silence more trustworthy:

> "Silence gains more probative weight where it persists in the face of accusation, since it is assumed in such circumstances that the accused would be more likely than not to dispute an untrue accusation." United States v. Hale, 422 U.S. 171, 176 (1975).

Fourth, the evidence showed the United States was being ruled by a giant conspiracy to exterminate and mass murder, to overthrow the U.S. Constitution, and to impose Nazi doctrines on America. Never in history had it ever been more imperative to deny charges if they were untrue.

And fifth, the Justices met the charges by claiming they must be obeyed even if they decreed the mass murder of Jews, or anyone else, to be liberty.[49]

A government of laws can permit only one conclusion to be drawn from these facts: the U.S. Supreme Court confessed in court that the charges are true.

If Roe v. Wade is a mistake of law, then all government officials, news media persons and public advocates who help to support it can be prosecuted for complicity in mass murder and extermination.

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48. Marbury v. Madison, 1 Cranch 137, 179-180 (1803).

49. See note 19, supra.

The general rule is that mistake of law is no excuse for breaking the law.[50] The limited affirmative defense of reasonable reliance on an official judicial opinion, thereafter determined to be a mistake of law, does not apply in homicide cases, much less national extermination.[51] And even if it did, no reliance on Roe v. Wade could be reasonable in view of the above facts. So the law applied at Nuremberg applies here. Obedience to decrees of the supreme judge is no defense to complicity in extermination and mass murder.

Even if the U.S. Supreme Court held a gun to a man's head, and threatened death unless he obeyed Roe v. Wade, it would not be a defense to homicide. The law says "he ought rather to die himself than escape by the murder of an innocent."[52]

In explaining why Western democracies bowed to violence and Nazis got away with monstrous crimes, Winston Churchill quoted Machiavelli: "Men avenge slight injuries, but not grave ones." Thus America is now ruled by a giant conspiracy to mass murder.

"Political language," wrote George Orwell, "is designed to make lies sound truthful and murder respectable." In his novel "1984," Orwell described a tyranny which claimed "Whatever the Party holds to be truth is truth," and defrauded its subjects into obedience with its slogans

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50. R. Perkins, Criminal Law 920 (2d ed. 1969). Oliver Wendell Holmes, The Common Law 41 (1963). The Constitution's ex post facto provisions do not apply to judicial decisions which are a mistake of law. Ross v. Oregon, 227 U.S. 150, 161 (1912).

51. Model Penal Code, Tentative Draft No. 4, Comments Sec. 2.04, page 138; R. Perkins, Criminal Law 928 (2d ed. 1969).

52. 4 Bl. Com. 30.

"FREEDOM IS SLAVERY" and "WAR IS PEACE." This science fiction may appear implausible, yet for two decades the United States has been ruled by a Court which claims, "Whatever the Court holds to be truth is truth," and maintains obedience with its slogans - MASS MURDER IS LIBERTY, FALSEHOOD IS TRUTH, and TREASON IS LAW.

But all that will be swept away. The primitive idea, that some can gain by killing others, has no future. The message of our Declaration of Independence becomes more true every day - reverence for life is the only path to the future. Wherever we are, wherever in the universe our kind may go, our essential thought, the thought necessary for us to exist, will always be reverence for life.

CONCLUSION

Merely overruling Roe v. Wade will not remedy the wrong. The Court misguided this nation and the entire world.

Now the Court must speak the truth. The Constitution's guarantee of life to "any person," made in its Fifth and Fourteenth Amendments, does include the unborn. State and federal governments have a duty to protect unborn life.

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Alan Ernest
Counsel